SO ORDERED.

SIGNED this 11 day of March, 2005.

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:	)	
REDIE B. LEWIS	)	**Case No. 03-41515**
	)	**Chapter 13**
Debtor.	)	
	)	
REDIE B. LEWIS	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Adversary No. 03-7068**
	)	
BNC MORTGAGE, INC.,	)	
OPTION ONE MORTGAGE CORP.,	)	
FIRST UNION NATIONAL BANK,	)	
KOZENY & MCCUBBIN, L.C.,	)	
MILLER ENTERPRISES, INC.,	)	
JEFFREY MILLER, Individually,	)	
ADAMSON & ASSOCIATES, INC.,	)	
MAPLEWOOD MORTGAGE, INC.,	)	
and DOES 1-100 Inclusive.	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER DENYING OPTION ONE MORTGAGE CORP.'S MOTION FOR SANCTIONS, AND GRANTING IN PART AND DENYING IN PART KOZENY & MCCUBBIN'S MOTION FOR SANCTIONS

This matter is before the Court on motions for sanctions filed by Defendants Option One Mortgage Corp.[1] and Kozeny & McCubbin, L.C.[2] ("Defendants"). Each relate exclusively to Plaintiff's First Amended Complaint,[3] which this Court dismissed, in part, and allowed Plaintiff to amend, in part.[4] The Court has jurisdiction to hear this matter as it is related to the bankruptcy case that arises under Title 11 of the United States Code, and the parties have all consented to the Court hearing and determining the issues involved in this case and entering all appropriate orders and judgments.[5]

---

[1]Doc. 114.

[2]Doc. 115.

[3]Doc. No. 44. Each of these parties has also filed a Motion for Sanctions relating to Plaintiff's Second Amended Complaint (Doc. Nos. 204 and 205). That Motion is the subject of another order issued this date.

[4]Doc. No. 120.

[5]28 U.S.C. § 1334 and 28 U.S.C. § 157(c)(2). *See also* Doc. No. 117, which is an order entered June 16, 2004, confirming that all parties have provided written consent to allow this Court to hear and determine this case and enter all appropriate orders and judgments pursuant to 28 U.S.C. § 157(c)(2), subject to review under 28 U.S.C. § 158.

I. STANDARD FOR SANCTIONS UNDER RULE 9011

Defendants are seeking sanctions under Fed. R. Bankr. P. 9011(c).[6] Rule 9011 provides, in pertinent part, as follows:

> **a) Signing of papers**
>
> Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
>
> **(b) Representations to the court**
>
> By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

---

[6]The Defendants actually refer to Fed. R. Civ. P. 11 throughout their pleadings, rather than Fed. R. Bankr. P. 9011, which is applicable in this bankruptcy adversary proceeding. This error is inconsequential, however, as Fed. R. Civ. P. 11 and Fed. R. Bankr. P. 9011 are nearly identical, and "[r]ulings under Fed. R. Civ. P. 11 are authoritative in cases involving Bankruptcy Rule 9011." *In re Rex Montis Silver Co.*, 87 F.3d 435, 437 (10th Cir. 1996).

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.[7]

Accordingly, Rule 9011(c) provides the Court with the authority to impose appropriate sanctions upon attorneys, law firms or parties if the Court finds that subsection (b) has been violated.

II. ANALYSIS

A. Option One's claims for sanctions

1. The Court cannot find that Plaintiff or Mr. Toth violated Rule 9011(b)(1).

Option One Mortgage Corp. ("Option One") claims that both Plaintiff and her counsel, Timothy Toth violated Rule 9011(b)(1) by filing the First Amended Complaint, alleging their purpose was to "harass Option One and to cause unnecessary delay and needlessly increase the cost of litigation" in both the main bankruptcy and in the state court foreclosure case. The Court assumes what Option One is arguing is that Plaintiff and Mr. Toth's sole, or main, motivation in filing the First Amended Complaint was to keep her underlying bankruptcy petition alive (along with its attendant stay against selling her home, under 11 U.S.C. § 362), as well as to delay the ultimate foreclosure sale of the subject real property, which sale was ordered by the state court in November 2002.

[7]Fed. R. Bankr. P. 9011(a) and (b). All future references to "Rule" refer to the Federal Rules of Bankruptcy Procedure.

As a preliminary matter, the Court does not believe that under the facts of this case, sanctions should be awarded against Plaintiff Lewis. Although Plaintiff was pro se when she filed the original adversary complaint, she retained counsel to file the First Amended Complaint. Option One does not address whether, when the actual party who is represented by counsel has not signed the pleading in question, sanctions can or should be brought against the party, individually, under Rule 9011(b)(1). In this Court's view, unless a party has misrepresented the facts to counsel on which counsel then bases his legal theories, or has in some other way taken on an active role as the catalyst behind the offensive pleading, the party is not the person responsible for making sure a valid legal claim is contained within the filed pleading. Instead, the client should be able to rely upon her attorney to conduct a reasonable inquiry and determine whether the claims are well grounded in fact, and warranted under existing law.[8]

In reviewing Mr. Toth's rather strident response to these Motions for Sanctions, he never even suggests that his client misrepresented the facts to him, or was in any way personally culpable for his decision to file a First Amended Complaint that contained factual allegations and legal theories barred by the applicable statute of limitations. For that reason, the Court is unwilling, and believes it would be imprudent, to impose an objective standard of reasonable inquiry on a nonsigning represented party such as Lewis. The Court will not grant sanctions against Lewis, personally.

---

[8]*See Taylor v. United States*, 151 F.R.D. 389, 397 (D. Kan. 1993) (finding that unless there is evidence indicating that the plaintiff purposely withheld critical information from her counsel, such that she would be the "catalyst" behind the filing of the complaint, party is entitled to rely on her attorney's legal acumen whether to file the pleading) and *In re Alberto*, 119 B.R. 985, 993 (Bankr. N. D. Ill. 1990) (citing to cases noting that generally sanctions fall wholly on client who has misled attorney as to facts or purpose of proceeding, but also noting that when lawyers yield to the temptation to file baseless pleadings to appease clients, they must understand that sanctions will be levied solely against them).

Turning to Option One's request for sanctions against Plaintiff's counsel, Option One argues that it is entitled to sanctions as a result of being named as a party defendant related to Count II (RICO claim) and Count V (Discrimination claim). Option One's main argument in support of its claim for sanctions under Rule 9011(b)(1) is that because Plaintiff Lewis could have brought these claims in the state court proceeding and chose not to, she cannot now re-litigate these issues in this forum. It thus argues that her attempt to sue Option One in this proceeding is thus necessarily for an improper purpose, such as to harass or to cause unnecessary delay or needlessly increase the cost of litigation.

The defect in this argument is that Option One was not a party to the state court litigation. Unless Option One intended to argue that Lewis was somehow required to join Option One as a third party defendant in the state court proceeding, an argument it has not made and which this Court doubts is legally correct, Option One is not a beneficiary of the principles of *res judicata* from that state court litigation.[9]

In addition, although the Court has serious concerns about Plaintiff's legal basis for bringing these claims, the Court finds that Option One has provided no evidence that Plaintiff and Mr. Toth had any improper motive in bringing the claims, at least against Option One.[10] The Court has no basis to find that

---

[9]*See* Doc. No. 120, pp. 20-23 for a full discussion, in the context of this case, of the applicability of *res judicata* and issue preclusion, from which principles Defendant First Union benefitted when this Court dismissed Lewis' claims against it. In summary, for *res judicata* to apply, four conditions must be met: (1) identity in the things sued for, (2) identity of the cause of action, (3) identity of persons and parties to the action, and (4) identity in the quality of the persons for or against whom the claim is made. Obviously, since Option One was not a party defendant in the state court litigation, element (3), identity of persons and parties to the action, is missing.

[10]The Court agrees, and so noted in its order granting First Union National Bank's motions to dismiss both Plaintiff's First and Second Amended Complaints against it, that Plaintiff was required to bring these causes of action against First Union in the state court proceeding. Her attempt to re-litigate issues that should have been litigated by her in the state court action brought by First Union (who was a

Plaintiff or Mr. Toth filed the First Amended Complaint "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation," as required by Rule 9011(b)(1).

2. The Court cannot find that Mr. Toth violated Rule 9011(b)(2) by bringing the RICO claim and the discrimination claims against Option One.

Option One next seeks sanctions against Mr. Toth pursuant to Rule 9011(b)(2), for bringing claims that were not warranted by existing law. First, Option One claims that Mr. Toth violated Rule 9011(b)(2) by making a RICO claim because "Plaintiff fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6)."[11] Option One argues that the First Amended Complaint failed to contain the required specificity to bring a RICO claim, and that it also failed to specifically address the discrete allegations of discrimination against Option One.

The simple fact that Plaintiff's First Amended Complaint failed to properly state a claim against Option One for violating RICO or for discrimination is not a basis, in and of itself, to find that Mr. Toth violated Rule 9011(b)(2). Were the Court to hold otherwise, Rule 9011(b)(2) would necessarily be implicated each and every time an adversary complaint (or in federal district court, a complaint) was dismissed under Fed. R. Civ. P. 12(b)(6).[12] Generally speaking, civil RICO claims and discrimination claims can be legally valid, and Option One's motion for sanctions does not provide any arguments to show

---

party, obviously) appear to have no proper purpose.

[11]Option One also claims that the Plaintiff could not produce evidence to support this claim, but that argument would fall under Rule 9011(b)(3), which is addressed later in this opinion, rather than Rule 9011(b)(2).

[12]*See Tahfs v. Proctor*, 316 F.3d 584, 594-95 (6th Cir. 2003) (holding not every case dismissed under Rule 12(b)(6) warrants imposition of sanctions). Fed. R. Civ. P. 12(b)(6) is made applicable to adversary proceedings by Fed. R. Bankr. P. 7012(b).

any legal bar to Plaintiff bringing a RICO or discrimination claim.[13] The fact that Plaintiff failed to properly plead her case is not equivalent to holding that the claim was not warranted by existing law. Although failing to plead a RICO claim with the necessary specificity and failing to include any specific information regarding Option One's alleged discriminatory conduct may be a sign of poor lawyering, it is not sufficient conduct to warrant sanctions under Rule 9011(b)(2).[14]

---

[13]Option One fails to make the argument that sanctions are warranted because the discrimination claim was barred by the applicable statute of limitations. The Court finds Option One was required to make that argument in order to receive sanctions on that basis. Rule 9011(c)(1)(A) requires a motion for sanctions to "describe the specific conduct alleged to violate subsection (b);" Option One failed to do so.

[14]The Court also notes that the RICO claim contained in the First Amended Complaint was not dismissed by the Court, but rather the Plaintiff was given an opportunity to amend the claim to bring it into conformity with the heightened pleading requirements for a RICO claim. The discrimination claim contained in the First Amended Complaint was dismissed on statute of limitations grounds, but, as noted above, Option One never raised the statute of limitations defense as a basis for dismissing this claim against it. More importantly, Option One did not put Plaintiff's counsel on notice, as it is required to do by serving an advanced copy of the Motion for Sanctions, that a basis for counsel withdrawing the offending pleading was because the claim was barred by the applicable statute of limitations. *See* Rule 9011(c)(1)(A). The Certificates of Service of the advanced copy of the sanctions motions filed by both Option One and Kozeny (Doc. Nos. 108 and 109) and the Motions for Sanctions thereafter filed by them (Doc. Nos. 114 and 115), are completely silent about the claims being barred by the applicable statute of limitations. Although the Court is exceedingly displeased that Plaintiff's counsel brought four causes of action for which the statute of limitations had clearly expired, the parties moving for sanctions did not properly notify Plaintiff's counsel that that was a basis for him withdrawing the offending pleading (First Amended Complaint). For that reason, the Court will not grant sanctions as a result of this omission by movants. *Cf. Murphy v. Klein Tools, Inc.*, 123 F.R.D. 643 (D. Kan. 1988) (declining to award monetary sanctions against plaintiff's counsel for filing complaint barred by statute of limitations because defendants delayed more than four years in raising the issue).

3. The Court lacks sufficient evidence to find that Plaintiff and Mr. Toth violated Rule 9011(b)(3).

Finally, Option One claims that both Plaintiff and Mr. Toth should be sanctioned for violating Rule 9011(b)(3) on the basis that their allegations and factual contentions were not warranted by the evidence. Because the Court dismissed four of the counts in the First Amended Complaint based upon the statute of limitations, and allowed Plaintiff to amend her complaint to properly plead a RICO claim, the Court never heard the underlying evidence in this case. In other words, as a matter of law, Plaintiff was prevented from presenting the underlying evidence to support her claims, because those claims were barred by the applicable statute of limitations. As such, the Court cannot find that the factual contentions were not warranted by the evidence. Therefore, Option One's motion for sanctions is denied as it relates to a claim under Rule 9011(b)(3).[15]

B. Kozeny & McCubbin's claims for sanctions

1. The Court cannot find that Plaintiff or Mr. Toth have violated Rule 9011(b)(1).

Kozeny & McCubbin ("Kozeny") also claims that both Plaintiff and her counsel, Mr. Toth, violated Rule 9011(b)(1) by filing the First Amended Complaint "in order to harass Kozeny & McCubbin and to cause unnecessary delay and needlessly increase the cost of litigation." Its bases for seeking

---

[15]This Court is not prepared to hold that under no circumstances could sanctions ever be awarded under Rule 9011(b)(3) when the case is dismissed on statute of limitations grounds prior to trial, but it is not willing to do so under the facts of this case. *See Tahfs v. Proctor*, 316 F.3d at 595 (noting that as a general proposition, a court should be hesitant to determine that a party's complaint violates Rule 11 when the suit is dismissed for failure to state a claim and there is nothing before the court except the bare allegations of the complaint).

sanctions are nearly identical to those asserted by Option One, and were apparently written by the same attorney.

As noted above, and for the same reasons, the Court will not award sanctions against Plaintiff Lewis, individually, because there is no allegation, or evidence to support, that she misrepresented the facts to counsel on which the legal theories were based. Turning to Kozeny's request for sanctions against Plaintiff's counsel, Kozeny argues that it is entitled to sanctions as a result of being named as a party defendant related to the negligence claim (Count I). Kozeny's main argument in support of its claim for sanctions under Rule 9011(b)(1) is that because Plaintiff Lewis could have brought this claim in the state court proceeding and chose not to, she should not be allowed to now re-litigate these issues in this forum. It thus argues that her attempt to sue Kozeny in this case is necessarily for an improper purpose, such as to harass or to cause unnecessary delay or needlessly increase costs of litigation.

For the same reason that the Court could not sustain a motion for sanctions for Option One on this basis, it also cannot do so for Kozeny. Kozeny was also not a party to the state court litigation, and thus also cannot obtain the benefits of the principles of *res judicata* from that state court litigation. Similarly, although the Court has serious concerns about Plaintiff's legal basis for bringing this claim, the Court finds that Kozeny has provided no evidence that Plaintiff and Mr. Toth had any improper motive in bringing the claims. The Court thus has no basis to find that Plaintiff or Mr. Toth filed the First Amended Complaint "for any improper purpose," as required by Rule 9011(b)(1).

2. The Court finds Mr. Toth did violate Rule 9011(b)(2) by bringing the negligence claim against Kozeny, as that claim was not warranted by existing law.

Kozeny next claims that Mr. Toth violated subsection (b)(2) of Rule 9011 by filing Count I, which alleged that Kozeny was negligent in bringing the state court foreclosure action. In essence, the claim is that Kozeny's client, First Union, was not the true owner of the note and mortgage being foreclosed, that Kozeny knew or should have known this fact, and thus Kozeny was negligent when it filed and prosecuted the state court foreclosure action.

Kozeny counters by arguing that because the state court had already concluded that Kozeny's client was, in fact, the owner of the note, Toth cannot collaterally attack that judicial holding by filing a suit that requires proof of the exact opposite of that holding. Kozeny argues that because this Court must give full faith and credit to the state court's decision that First Union was in fact the owner and holder of the instruments, Mr. Toth's decision to bring the negligence claim violated Rule 9011(b)(2).

Article 4, Section 1 of the United States Constitution, referred to as the "full faith and credit clause," mandates that federal courts be bound by the decisions of state courts if the state's preclusion laws make the decision binding,[16] unless minimum due process standards are not met.[17] Before a federal court examines state law rules of preclusion, it must first determine whether the opposing party had a full and fair opportunity to litigate the issue in the prior action.[18]

---

[16]*Kremer v. Chemical Const. Corp*., 456 U.S. 461, 482 (1982)

[17]*Id.* at 481.

[18]*Id*.

This Court, after taking judicial notice of the contents of the state court pleadings,[19] can easily determine that Plaintiff raised, in many pleadings in that forum, the issue of whether First Union was the true owner and holder of the note and mortgage. The state court clearly found this allegation to be without merit, as the judgment specifically found that First Union was the holder. Any lawyer, including Plaintiff's counsel, would have to know that for a foreclosing party to be allowed to foreclose, they have to be found to be the holder of the instruments. Plaintiff's original pro se complaint referenced this state court foreclosure proceeding, as did Mr. Toth's First and Second Amended Complaints, demonstrating his awareness of the state court decision on this very issue.

Mr. Toth's attempt to re-litigate this basic issue in this adversary proceeding is simply improper. Plaintiff clearly had a full and fair opportunity to be heard on this issue in the state court, notwithstanding her choice not to hire counsel to represent her in that proceeding. The state court clearly ruled on this very issue; it was a determination on the merits. Plaintiff was well aware of the state court's decision on this issue, as was Mr. Toth. This Court, therefore, cannot ignore the state court finding, which finding was never appealed. Instead, this Court is precluded, *ab initio*, from making the critical finding that would be a prerequisite to liability on a negligence claim against Kozeny—that it pursued a foreclosure action for a client who did not own the note.

---

[19] *See* Doc. No. 116, which contains a substantial number of pleadings from the state court. A review of many of the pleadings contained in the state court file reveals that 1) Plaintiff continually threatened to bring numerous claims, including those subsequently brought herein, against both First Union and many others not a party to that proceeding, demonstrating her awareness of these potential claims, and 2) that she failed to litigate them in that proceeding.

Any attorney who performed a reasonable inquiry into the facts and law surrounding this issue should have determined that the claim was not warranted by existing law, and would not have brought this claim. Mr. Toth's decision to continue litigating an issue that was decided by the state court foreclosure proceeding violates Rule 9011(b)(2), and requires sanctions pursuant to Rule 9011(c).

3. The Court lacks sufficient evidence to find that the Plaintiff and Mr. Toth violated Rule 9011(b)(3).

Kozeny makes the same argument as Option One in arguing that both Plaintiff and her counsel should be sanctioned for violating Rule 9011(b)(3), in that their allegations and factual contentions were not warranted by the evidence. As decided, above, because the Court dismissed four of the counts in the First Amended Complaint based upon the statute of limitations, and allowed Plaintiff to amend her complaint to properly plead a RICO claim, the Court never heard the underlying evidence in this case. Plaintiff was prevented from presenting the evidence to support her claims, because those claims were barred by the applicable statute of limitations. As such, the Court cannot find that the factual contentions were not warranted by the evidence. Therefore, Kozeny's motion for sanctions is denied as it relates to a claim under Rule 9011(b)(3).

C. Amount of Sanctions

Having found a violation of Rule 9011 in bringing the negligence claim against Kozeny contained within the First Amended Complaint, the Court must exercise its sound discretion in fashioning an appropriate sanction. Kozeny seeks repayment of "all its attorney's fees and costs incurred herein," along with dismissal of the complaint with prejudice, as sanctions against Mr. Toth. The Court has already found that the Second Amended Complaint should be dismissed, with prejudice, and therefore the request for

that relief, as sanctions, is moot. Although Kozeny suggests Toth should have to pay "all of Defendant's attorney's fees and costs incurred herein," the Court finds that even if repayment of attorney fees was appropriate, assessment of "all fees and costs" incurred in the entire case would not be an appropriate sanction for the filing of the First Amended Complaint, which is the only transgression by Plaintiff's counsel that is before this Court on the instant motion.[20]

The Tenth Circuit Court of Appeals has noted that "in keeping with its 'ultimate goal of deterrence, rather than compensation,' Rule 11 'de-emphasizes monetary sanctions and discourages direct payouts to the opposing party.'"[21] Sanctions imposed for violations of Rule 9011 "shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated."[22] Sanctions under Rule 9011(c)(2) may include "directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation."[23]

---

[20]This Court is simultaneously issuing a decision denying Kozeny's Motion for Sanctions relating to the filing of Plaintiff's Second Amended Complaint, because of Kozeny's apparent failure to comply with the advanced notice requirements of Rule 9011(c)(1)(A). Thus, it would not be appropriate for the Court to grant attorney fees for all of Kozeny's attorney fees in the case; the Court will thus limit its ruling to the appropriate sanction for including the negligence claim against Kozeny in the First Amended Complaint

[21]*Hutchinson v. Pfeil,* 208 F.3d 1180, 1183 (10th Cir. 2000) (quoting *Ridder v. City of Springfield,* 109 F.3d 288, 294 (6th Cir.1997) and noting that Rule 11(c)(2) authorizes payment of "some or all" of moving party's fees only if "warranted for effective deterrence").

[22]Fed. R. Bankr. P. 9011(c)(2).

[23]*Id.*

Based upon Rule 9011's mandate that attorney fees are to be limited to the amount that would deter comparable conduct by Mr. Toth and others similarly situated, the Court finds that awarding all attorney fees incurred by Kozeny & McCubbin would be excessive. This is especially true because the Court has only found that filing one Count, in one of three complaints, was not warranted by existing law. Furthermore, this is the first case before this Court where sanctions have been sought against Mr. Toth. In other words, there is no established history of abusive filings in this Court that would lead the Court to believe that a large monetary sanction is necessary to prevent further abuse. Further, the Court is aware of the medical issues that Mr. Toth claims to have endured during the past months, and the fact that he claims to have missed much work in the recent past because of those medical issues. Accordingly, this Court has no evidence whether Mr. Toth could afford to pay a large monetary sanction, even if ordered to do so.

Based upon these facts, and all the circumstances surrounding this case, the Court finds Mr. Toth will be required to pay a portion of Kozeny & McCubbin's attorneys' fees in the amount of $1,000.00. The Court finds that this sanction is the least amount necessary to deter repetition of comparable conduct by Mr. Toth and others similarly situated in the future. This Court also gives this written admonishment to Mr. Toth to insure that he, at all times in the future, makes reasonable inquiry that every claim he brings is warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

Mr. Toth should take no comfort that the Court did not order a larger sanction. The Court saw a pattern by Mr. Toth of late filings, poorly drafted pleadings, and a failure to comply with at least two court orders requiring the filing of a final pretrial order, after consultation with opposing counsel. Further, the

Court is allowing Mr. Toth to withdraw, as he previously requested, in the hope that he will not again take on a large case such as this, which, as a sole practitioner (his oft-repeated excuse for late filings), he is apparently ill-prepared to handle.

IT IS, THEREFORE, BY THIS COURT ORDERED that Defendant Kozeny & McCubbin's Motion for Sanctions Under Rule 11 of the Federal Rules of Civil Procedure (Doc. 115) is granted in part and denied in part. The motion is granted to the extent it seeks sanctions against Mr. Toth for violations of Rule 9011(b)(2), for asserting the negligence claim, and is denied in all other respects.

IT IS FURTHER ORDERED that Timothy Toth pay a portion of Defendant Kozeny & McCubbin's attorney fees, in the amount of $1,000.00, as the monetary sanction for his violation of Rule 9011(b)(2).

IT IS FURTHER ORDERED that Option One Mortgage's Motion for Sanctions Under Rule 11 of the Federal Rules of Civil Procedure (Doc. 114) is denied.

###